

NAYS—37

Baldwin	Hirono	Reed
Blumenthal	Kaine	Reid
Booker	King	Sanders
Boxer	Klobuchar	Schatz
Brown	Leahy	Schumer
Cantwell	Markey	Shaheen
Cardin	Menendez	Stabenow
Coons	Merkley	Udall
Durbin	Mikulski	Warren
Feinstein	Murphy	Whitehouse
Franken	Murray	Wyden
Gillibrand	Nelson	
Heinrich	Peters	

NOT VOTING—1

Donnelly

The PRESIDING OFFICER. On this vote, the yeas are 62, the nays are 37.

Two-thirds of the Senators voting, a quorum being present, not having voted in the affirmative, the bill, on reconsideration, fails to pass over the veto of the President of the United States.

Mr. WHITEHOUSE. I move to reconsider the vote.

Mr. MCCONNELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader.

MORNING BUSINESS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

LYNCH NOMINATION

Mr. LEAHY. Mr. President, nearly 4 months ago—not 4 weeks ago but 4 months ago—President Obama announced his intention to nominate Loretta Lynch to be our country's next Attorney General. I had the privilege of attending that White House ceremony. In fact, I took this photograph at the ceremony.

But as I took it, I was mostly moved by what Ms. Lynch explained. She said she was excited about the challenge of becoming our Nation's chief law enforcement officer. She noted with obvious admiration that the Department of Justice is the only Cabinet Department named for an ideal. Think of that. The Department of Justice. It is named for the ideal of justice.

We know from Loretta Lynch's long public service career that she aspires to make that ideal a reality. She will when she becomes Attorney General of the United States. As U.S. Attorney for the Eastern District of New York, she brought countless terrorists and cyber criminals to justice. She obtained convictions against corrupt public officials from both political parties. She fought tirelessly against violent crime and financial fraud. Her record shows as Attorney General she will effectively, fairly, and independently enforce the law.

As many people have said, she is a prosecutor's prosecutor. Her record of accomplishment goes beyond just that. It goes to who she is as a person. It is bolstered by the faith and values instilled in her by her family. The Judiciary Committee was honored to have her proud father, the Reverend Lorenzo Lynch, with us not only at both days of the historic hearings in January, but also last Thursday as the committee considered his daughter's historic nomination.

When Loretta Lynch was a young child, Reverend Lynch bravely opened his church to students and others to organize lunch counter sit-ins in North Carolina. He taught his only daughter that "ideals are wonderful things, but unless you can share them with others and make this world a better place, they are just words." Every one of us who has ever been in public service ought to listen to that. The fact that she has dedicated the majority of her career to public service reaffirms that she has lived those ideals of justice in the service of others.

Last week, the committee reported her nomination favorably with a bipartisan vote. I wish the vote had been unanimous. I suspect that if the President who nominated her had been a Republican, she would have been confirmed by now. But in the sixth year of this administration, perhaps there is no one who can be confirmed unanimously, because those Republicans who are opposing Ms. Lynch are not doing so based on her record. They are opposing her because they disagree with a decision that President Obama made and that she played no part in. That is not treating her fairly.

One need only look at her supporters to know how nonpartisan her nomination really is. Louis Freeh, the former Director of the FBI and a Federal judge, has written:

[I]n my twenty-five years of public service—23 in the Department of Justice—I cannot think of a more qualified nominee to be America's chief law enforcement officer.

I know Judge Freeh very well. He is a man of total integrity. He would not say this unless he strongly believed it.

The current New York Police Commissioner, who was appointed by a Democrat, and a former New York Police Commissioner, appointed by a Republican, both strongly support her nomination.

Even prominent Fox News hosts have praised Loretta Lynch's work as a prosecutor. Bill O'Reilly has called her a hero for her prosecution of a child rapist. Megyn Kelly, of Fox, has described Ms. Lynch as a "straight shooter" for her service as a Federal prosecutor, especially for her crackdown on gang crime and terrorism.

Ms. Lynch also has broad support from law enforcement, fellow prosecutors, civil rights groups, and numerous other prominent individuals.

I ask unanimous consent to have a list of letters in support of her nomination printed in the RECORD following my remarks.

Nobody else is seeking the floor. I ask unanimous consent to go beyond the 10 minutes allotted, up to 3 extra minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. In January, Ms. Lynch testified before the Senate Judiciary Committee for nearly 8 hours. She has now responded to nearly 900 questions for the record. I have been here 40 years and I have a hard time remembering somebody who has answered so many questions. The witnesses invited by Republicans to speak on this, not a single one of them actually opposed her nomination. In fact, I asked all of the outside witnesses: If anybody here opposes her nomination, would you please raise your hand. Nobody did.

Despite this, some voted no—some Republican Senators voted no on her nomination in committee. Some of these Senators opposed her because she would not renounce the President's Executive action to keep immigrant families together. They are attacking her for this. They blame this on her. But they fail to acknowledge that if the Republican leadership in the House had just allowed a vote on the immigration reform that passed the Senate, then the President would not have been compelled to act.

Very hard-working Republicans and Democrats came together in this body to pass by a 2-to-1 margin an immigration bill. Most people felt it would pass the House of Representatives had it been allowed to come to a vote. But the Speaker determined not to let it come to a vote. You cannot then say: We are not going to vote on anything, but, oh, by the way, we are not going to let the President do what Presidents have always done in the absence of legislation, take executive action.

Now we all agree that we have problems in our immigration system. We all agree that we need legislation to fix it. The President is not going to do that. Congress has to do it. We have to stand up and vote for or against changes. But to blame the Attorney General nominee for this is simply unfair. To blame her because the House of Representatives will not vote on immigration is not fair. Ms. Lynch played no part in the President's decision to set the prosecutorial priorities of the administration.

As a Federal prosecutor in New York, no one has claimed that Ms. Lynch has failed to enforce the law. There is no legitimate reason to delay her vote any longer. In fact, there are a whole lot of people in prison today who wish that she had not enforced the law. But if they were guilty of crimes, she enforced it, whether Republicans, Democrats—no matter who they were—and with quite a few terrorists—she enforced the law. She put them in prison.

So we should examine Loretta Lynch's nomination based on her

record, her accomplishments, her extraordinary character. I call on the Republican Leader to schedule an immediate vote on Loretta Lynch's confirmation. Vote yes or vote no. But this confirmation has been pending for 116 days—116 days. We have had several breaks—some of our constituents call them vacations—during that time. Let's take a day or so and vote on her.

Let's not deprive the American people of even one more day of having Loretta Lynch as their Attorney General. Let's vote to confirm this superb woman, this superb nominee for Attorney General, this nominee who believes that justice is an ideal, that all of us, no matter what our political party, should ascribe to.

I told her father how moved I was to watch his pride as she was before our committee for confirmation, I said, the pride was well earned because of the example he set to her as a child, to face up to all obstacles and overcome them. Well, let's not have the Senate set an obstacle that she cannot overcome. Let's have a vote. Let's put her in there as Attorney General, for the good of the country, not of any political party, but for the good of the country.

This is not the Attorney General of the President. This is not the Attorney General of the Members of this body. This is the Attorney General of the United States. It is the Attorney General for 300 million Americans. Let's give 300 million Americans the Attorney General they deserve.

I yield the floor.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

LETTERS RECEIVED IN SUPPORT OF LORETTA LYNCH'S ATTORNEY GENERAL NOMINATION
CURRENT & FORMER ELECTED OFFICIALS

The Honorable John Lewis (GA-5); The Honorable Kathleen Rice (NY-4), former District Attorney for Nassau County; Durham County, NC, Board of Commissioners; Martin County, NC, Board of Commissioners; John Sexton, President of New York University, Former Chairman of the New York Federal Reserve; The Honorable Marcia Fudge (OH-11)

Two letters from the 46 members of the Congressional Black Caucus: The Honorable Alma Adams (NC-12); The Honorable Karen Bass (CA-37); The Honorable Joyce Beatty (OH-03); The Honorable Sanford D. Bishop, Jr. (GA-02); The Honorable Cory Booker (D-NJ); The Honorable Corrine Brown (FL-05); The Honorable G.K. Butterfield (NC-01); The Honorable André Carson (IN-07); The Honorable Yvette D. Clarke (NY-09); The Honorable Wm. Lacy Clay (MO-01); The Honorable Emanuel Cleaver, II (MO-05); The Honorable James E. Clyburn (SC-06); The Honorable Bonnie Watson Coleman (NJ-12); The Honorable John Conyers, Jr. (MI-13); The Honorable Elijah E. Cummings (MD-07); The Honorable Danny K. Davis (IL-07); The Honorable Donna F. Edwards (MD-04); The Honorable Keith Ellison (MN-05); The Honorable Chaka Fattah (PA-02); The Honorable Marcia L. Fudge (OH-11); The Honorable Al Green (TX-09); The Honorable Alcee L. Hastings (FL-20); The Honorable Sheila Jackson Lee (TX-18); The Honorable Hakeem Jeffries (NY-08); The Honorable Eddie Bernice Johnson (TX-30); The Honorable Hank Johnson (GA-04); The Honorable Robin Kelly (IL-02);

The Honorable Brenda Lawrence (MI-14); The Honorable Barbara Lee (CA-13); The Honorable John Lewis (GA-05); The Honorable Mia Love (UT-04); The Honorable Gregory W. Meeks (NY-06); The Honorable Gwen Moore (WI-04); The Honorable Eleanor Holmes Norton (DC); The Honorable Donald M. Payne, Jr. (NJ-10); The Honorable Stacey Plaskett (VI); The Honorable Charles B. Rangel (NY-13); The Honorable Cedric Richmond (LA-02); The Honorable Bobby L. Rush (IL-01); The Honorable David Scott (GA-13); The Honorable Robert C. "Bobby" Scott (VA-03); The Honorable Terri A. Sewell (AL-07); The Honorable Bennie Thompson (MS-02); The Honorable Marc Veasey (TX-33); The Honorable Maxine Waters (CA-43); The Honorable Fredrica Wilson (FL-24)

CURRENT & FORMER LAW ENFORCEMENT OFFICIALS

Louis Freeh, former FBI Director, Chairman Emeritus of Pepper Hamilton; William Bratton, Police Commissioner of New York City; Kevin O'Connor, former Associate Attorney General at the U.S. DOJ in the Bush administration, current VP of Global Ethics and Compliance for United Technologies; Joseph Guccione, former U.S. Marshal for SDNY and current Managing Director for FGIS; John Gilbride, former Special Agent for DEA's NY Office and current Global Head of Financial Intelligence for Morgan Stanley; Larry Thompson, Former VP of Government Affairs and General Counsel of PepsiCo, Deputy U.S. Attorney General, and U.S. Attorney for Georgia; Jamie Gorelick, Former Deputy U.S. Attorney General; Bart Schwartz, Chairman of Guidepoint Solutions and former Chief of the Criminal Division for the SDNY United States Attorney's office; Brian Parr, Chief Security Officer of Citigroup and former Special Agent in Charge of the United States Secret Service, New York Field Office.

4 Former EDNY U.S. Attorneys: Andrew J. Maloney; Zachary W. Carter; Alan Vinegrad; Benton Campbell; 13 Former EDNY Assistant U.S. Attorneys: Stanley N. Alpert; Jodi L. Avergun; Robert L. Begleiter; Jason Brown; Eric O. Corngold; Matthew E. Fishbein; J. Christopher Jensen; Katya Jestin; Gregory J. O'Connell; Patricia A. Pileggi; David A. Pitofsky; Lauren J. Resnick; George A. Stamboulidis.

25 Former U.S. Attorneys from both Republican and Democratic administrations: David B. Barlow, United States Attorney, D. UT (2011-2014); Wayne A. Budd, United States Attorney, D. MA (1989-1992); Mark T. Calloway, United States Attorney, W.D. NC (1994-2001); Paul K. Charlton, United States Attorney, D. AZ (2001-2007); Paul E. Coggins, United States Attorney, N.D. TX (1993-2001); Robert C. Corrente, United States Attorney, D. RI (2004-2009); E. Bart Daniel, United States Attorney, D. SC (1989-1992); Richard H. Deane, Jr., United States Attorney, N.D. GA (1998-2001); Patrick J. Fitzgerald, United States Attorney, N.D. IL (2001-2012); Thomas B. Hefelfinger, United States Attorney, D. MN (2001-2006); Walter C. Holton, United States Attorney, M.D. NC (1994-2001); G. Douglas Jones, United States Attorney, N.D. AL (1997-2001); Scott R. Lassar, United States Attorney, N.D. IL (1997-2001); Matthew D. Orwig, United States Attorney, E.D. TX (2001-2007); Deborah Rhodes, United States Attorney, S.D. AL (2005-2009); Jose de Jesus Rivera, United States Attorney, D. AZ (1998-2001); Richard B. Roper, United States Attorney, N.D. TX (2004-2009); Richard A. Rossman, United States Attorney, E.D. MI (1980-1981); Jack W. Selden, United States Attorney, N.D. AL (1992-1993); Donald K. Stern, United States Attorney, D. MA (1993-2001); Charles J. Stevens, United States Attorney, E.D. CA (1993-1997); Jeffrey A. Tay-

lor, United States Attorney, D. DC (2006-2009); Gregory A. Vega, United States Attorney, S.D. CA (1999-2001); Kenneth L. Wainstein, United States Attorney, D. DC (2004-2006); Joseph D. Whitley, United States Attorney, N.D. GA (1990-1993), M.D. GA (1981-1986).

LAW ENFORCEMENT & CRIMINAL JUSTICE ORGANIZATIONS

National District Attorneys Association (NDA); National Organization of Black Law Enforcement Executives (NOBLE); Major Cities Chief's Association (MCCA); Federal Law Enforcement Officers Association; National Black Prosecutors Association; Women in Law Empowerment Forum; Association of Prosecuting Attorneys; FBI Agents Association; Women in Federal Law Enforcement (WIFLE); International Association of Chiefs of Police (IACP).

CIVIL RIGHTS ORGANIZATIONS

Leadership Conference on Civil and Human Rights; National Urban League; National Women's Law Center; YWCA; Alliance for Justice; People for the American Way; NAACP Legal Defense & Education Fund, Inc.; National Immigration Law Center (NILC); Lawyers' Committee for Civil Rights Under Law; Human Rights Campaign; American Federation of Labor and Congress of Industrial Organizations (AFL-CIO); Legal Momentum; Women's Legal Defense and Education Fund.

OTHERS

14 Former Presidents of the New York City Bar Association: Michael A. Cardozo; Michael A. Cooper; Louis A. Craco, Sr.; Evan A. Davis; Carey R. Dunne; John D. Feerick; Conrad K. Harper; Patricia M. Hynes; The Honorable Barry Kamins; Robert M. Kaufman; Bettina B. Plevan; The Honorable E. Leo Milonas; Barbara Paul Robinson; Samuel W. Seymour.

13 Current and Former Presidents of the Federal Bar Council: Robert J. Anello (2012-2014); Robert J. Giuffra, Jr. (2008-2010); Bernard W. Nussbaum (1990-1992); Joan G. Wexler (2004-2006); Mark C. Zauderer (2006-2008); Steven M. Edwards (1998-2000); Vilia B. Hayes (2014-Present); Bettina B. Plevan (1996-1998); Frank H. Wohl (2010-2012); Robert B. Fiske, Jr. (1982-1984); John J. Kenney (1994-1996); The Honorable Gerald Walpin (2002-2004); George B. Yankwitz (1992-1994).

44 Partners at Hogan Lovells: Stephen J. Immelt, CEO; J. Warren Gorrell, Jr., CEO Emeritus; Dennis H. Tracey, Head of U.S. Litigation; Stuart M. Altman; Robert B. Buehler; Ty Cobb; Steven M. Edwards; Scott Friedman; David J. Hensler; Robert F. Leibenluft; Sanford Litvack; Janet L. McDavid; Joseph R. Rackman; George A. Salter; Michael J. Shepard; Peter S. Spivack; Mark J. Weinstein; Peter R. Bisio; Claudette M. Christian; Robert B. Duncan; Ira M. Feinberg; Mark D. Gately; Craig A. Hoover; Adam K. Levin; Eric J. Lobenfeld; Martin Michaelson; Barbara M. Roth; Lee Samuelson; Ira S. Sheinfeld; Catherine E. Stetson; David F. Wertheimer; Stanley J. Brown; Arlene L. Chow; David Dunn; Amy Bowerman Freed; Maureen A. Hanlon; Mitch Lazris; Carol A. Licko; Mitchell R. Lubart; Peter J. Pettibone; Corey W. Roush; Allison J. Schoenthal; Frank T. Spano; Michael C. Theis.

11 Former Presidents of the New York County Lawyers' Association (NYCLA): Arthur Norman Field (1990-1992); Klaus Eppler (1995-1996); John J. Kenney (1996-1997); Rosalind S. Fink (1997-1998); Stephen D. Hoffman (1998-2000); Craig A. Landy (2000-2002); Catherine A. Christian (2007-2008); Ann B. Lesk (2008-2010); James B. Kobak Jr. (2010-2011); Stewart D. Aaron (2011-2013); Barbara Moses (2013-2014).

28 African American AmLaw partners and Fortune 500 general counsels: Benjamin F. Wilson, Managing Principal, Beveridge & Diamond, P.C.; John E. Page, Vice President, General Counsel and Secretary, Golden State Foods Corporation; Frederick R. Nance, Partner, Squire Patton Boggs LLP; Kevin J. Armstrong, General Counsel, DST Brokerage Solutions LLC; Anthony T. Pierce, D.C. Managing Partner, Akin Gump Stauss Hauer & Feld LLP; April Miller Boise, Vice President, General Counsel & Corp. Secretary, Veyance Technologies, Inc.; Kwamina Thomas Williford, Partner, Holland & Knight; Michael Parham, Sr. Vice President and General Counsel, RealNetworks, Inc.; Grace E. Speights, D.C. Co-Managing Partner, Morgan, Lewis & Bockius LLP; Gail D. Hasbrouck, SVP, General Counsel & Corporate Secretary, Advocate Health Care; John W. Daniels, Jr., Chairman Emeritus, Quarles & Brady LLP; Christopher P. Reynolds, General Counsel and Chief Legal Officer, Toyota North America; Ava E. Lias-Booker, Baltimore Managing Partner, McGuire Woods; Kevin J. Armstrong, General Counsel, DST Brokerage Solutions LLC; Dave Carothers, Managing Partner, Carothers DiSante & Freudenberg LLP; Phillip G. Hampton, II, D.C. Administrative Partner, Haynes and Boone, LLP; Maurice A. Watson, Chairman, Husch Blackwell LLP; Dennis Archer, Chairman Emeritus, Dickinson Wright, PLLC; Erek L. Barron, Counsel, Whiteford Taylor & Preston; W. Anthony Jenkins, Member, Dickinson Wright, PLLC; Frank P. Scruggs, Partner, Berger Singerman LLP; Paul W. Sweeney, L.A. Administrative Partner, K&L Gates; Paul Lancaster Adams, Partner, Ogletree, Deakins, Nash, Smoak & Stewart; Sherrie L. Farrell, Member, Dykema; Richard H. Deane, Jr., Atlanta Partner-in-Charge, Jones Day; Bernard Gugar, SVP & General Counsel, Harpo, Inc.; Damario Solomon-Simmons, Managing Partner, SolomonSimmonsSharrock & Associates; Steven Wright, Boston Executive Partner, Holland & Knight.

Audrey Strauss, EVP and Chief Legal Officer for ALCOA; Sara Moss, EVP and General Counsel for Estee Lauder Companies; National Conference of Women's Bar Associations; Women's Bar Association of DC; National Bar Association; Peter Walsh, Senior Deputy General Counsel for UnitedHealth Group; National Association of Women Lawyers; Constance Patillo; Frank Brown, Dean Emeritus at UNC-Chapel Hill; Tyrone Dash, Deacon at White Rock Baptist Church; National Association of Social Workers.

Mr. LEAHY. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. TOOMEY). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

KING V. BURWELL

Mr. HATCH. Mr. President, I rise today to discuss a tremendously important case that was heard this morning in the Supreme Court. The case is King v. Burwell, and it involves the administration of ObamaCare. I was privileged to attend the argument.

The King case is important for a number of reasons. It is important because it involves a fundamental compo-

nent of ObamaCare, and it is important because of its significant implications for the rule of law.

From the early days of the Republic, a core component of our constitutional character has been the idea that the government is a government of laws and not of men. That means our leaders are constrained by the words of the laws in our statutes and in our Constitution. Government officials must follow the law even when their personal preferences would lead them in a different direction.

The current administration, however, is engaged in a sustained assault on the rule of law. I have spoken many times on the Senate floor about the President's disturbing disregard for the separation of powers and other limits on his authority. His offenses run the gamut of releasing Guantanamo detainees without first notifying Congress, to claiming that congressional inaction somehow clothes him with legislative-like authority to suspend immigration laws, to arrogating to himself the power to determine when Congress is in session. President Obama's actions in the King case are of a piece with the other Executive overreaches.

First some background. ObamaCare requires every person in America to buy health insurance. This is the so-called individual mandate the Supreme Court controversially upheld 3 years ago.

Most Americans receive health insurance through their employer, which pays a large part of the premium, but not all do. Many must purchase insurance on their own. And to ensure that such individuals are able to comply with the individual mandate, ObamaCare directs States to create health care exchanges—government-operated Web sites where consumers can go to compare and choose insurance plans. ObamaCare also provides subsidies for individuals who purchase insurance through these State-run exchanges.

Remember that most people receive health insurance through their employer and that their employer pays part of the premium. Individuals who purchase insurance on their own through exchanges, however, don't receive this employer subsidy, so they themselves must contribute more toward the premium. ObamaCare provides subsidies to these individuals to help offset the cost of insurance.

With that background, let me turn now to the legal issue in King. As I have described, ObamaCare directs States to establish health care exchanges. To be precise, the law says that "each State shall, not later than January 1, 2014, establish an [exchange]" that meets certain conditions set forth in the law. But there is a wrinkle: The Constitution does not permit the Federal Government to order States to do things. This is called the anticommandeering principle and is well established in Supreme Court case

law. What the Federal Government can do, however, is incentivize States to act, and that is precisely what Congress attempted to do with ObamaCare.

Here is how the incentive works. Another provision of ObamaCare—the one at the heart of King—conditions the aforementioned subsidies on an individual's enrollment in a State-run exchange. According to this provision, a subscriber is eligible for a subsidy for each month she is covered by a plan that she "enrolled in through an Exchange established by the State." The text of this provision could not be more clear. If an individual enrolls in a plan through an exchange established by the State, she gets a subsidy; if she enrolls in any other plan, no subsidy.

The incentive for States to act also could not be more clear. If a State fails to establish an exchange, its citizens lose out on millions of dollars. ObamaCare's proponents quite reasonably thought this would lead States to set up exchanges and would thus accomplish the same result—the creation of State-run exchanges—that Congress could not achieve through a direct command. In fact, I actually heard arguments by administration people that if they put enough pressure on the States, the States would do this.

Congress also recognized, however, that some States might not take the deal; thus, it provided a backstop. In yet another provision of ObamaCare, Congress instructed that if a State does not set up an exchange by the January 2014 deadline, the Department of Health and Human Services shall "establish and operate such Exchange within the State."

Crucially, however, Congress did not similarly provide that subsidies would be available to subscribers enrolling through a federally established exchange, and the reason is obvious: If subsidies were available under both State and Federal exchanges, States would not have any incentive to create their own exchanges because the subsidies would come either way. Fewer States would create exchanges, meaning the Federal Government would have to step in and create more exchanges of its own.

The restriction of subsidies to State-established exchanges was thus a key element of ObamaCare's entire cooperative federalism scheme. Without this restriction, the end result would have been a federally run health care market—a result unacceptable to several key ObamaCare supporters whose votes were essential to passage of the bill.

Now we come to President Obama's act of overreach. Notwithstanding the unmistakably clear text of the statute, which limits subsidies to plans purchased through State-established exchanges, and notwithstanding that this limitation was absolutely fundamental to accomplishing Congress's purpose of incentivizing States to establish exchanges, the President decided he would also offer subsidies for plans purchased through federally established exchanges.